THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.9849 of 2004

ORDER:

1 This petition is filed questioning the action of the first respondent in seizing 70 bags of black jaggery from the house of the petitioner on 17.05.2004 and registering Crime No.48 of 2004 against the petitioner under the A.P. Excise Act 1968 (the Act).

2 The case of the petitioner is that on 17.05.2004 at about 9.15 AM first respondent and others visited his house and seized 70 bags of black jaggery and registered a case in Crime No.48 of 2004 against him though storing of black jaggery is not an offence under the provisions of the Act.

3 The Sub Divisional Prohibition and Excise Officer, Nalgonda filed his counter affidavit on behalf of the respondents alleging that Nalgonda Rural police conducted a raid on the godown of the petitioner on credible information and found 70 bags of black jaggery each bag containing 50 kgs and as the petitioner admitted before the mediators that he is selling black jaggery, useful for manufacture of illicit liquor, for illegal profits they arrested him and registered a case under Section 34 (e) of the Act in Crime No.48 of 2004, and in pursuance of the orders passed in W.P.M.P.No.12538 of 2004 they released the black jaggery on his furnishing bank guarantee for Rs.20,000/-. Since black jaggery was stored only for the purpose of sale to the manufacturers of illicit liquor, the same was seized from the possession of the petitioner, and so the petitioner is not entitled to any relief.

4 Black jaggery, admittedly, is not notified as an intoxicant under the provisions of the Act. Except the confession allegedly made by the petitioner to the police officials, there is nothing on record to show that he ever sold the black jaggery to the manufacturers of illicit liquor. As a seller is not bound to find out the purpose of purchase from an intending purchaser and as no purchaser would ordinarily reveal the real purpose of purchase, and as purchasers of goods, after purchase,

can make use of the product purchased by them for any purpose they like, and as the seller may not be having knowledge or intention of the purchaser for purchasing a particular product which can be put to multiple use, even assuming that some persons to whom the petitioner sold, made use of the black jaggery purchased by them from the petitioner, for manufacture of illicit liquor that fact does not clothe the respondents with an authority to seize the stock stored by the petitioner, as he cannot be said to have committed an offence under section 34(e) of the Act for the sales, if any, made by him earlier. Section 34(e) of the Act applies to transactions in present but not to transactions that took place earlier or are likely to take place in future, and so the petitioner cannot be said to have committed any offence by his being in possession of the black jaggery (when admittedly is not notified as an intoxicant under the Act) seized and so registration of crime against the petitioner for his being in possession of black jaggery is unsustainable.

5 Therefore, the F.I.R registered against the petitioner is liable to be and hence is quashed. Respondents shall return the bank guarantee to the petitioner. The writ petition is allowed accordingly. No order as to costs.

C.Y.Somayajulu, J.

06.11.2007

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